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Agricultural Situation

WTO Banana case update

2006

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Report Highlights:

As of January 1, 2006, the European Union established a new banana import tariff from MFN at 176 €/MT. The new import regime includes a duty-free annual import quota of 775,000 MT for ACP bananas. While all MFN countries have shown their disappointment with the new tariff, the reactions differ.

Includes PSD Changes: No
Includes Trade Matrix: No
Unscheduled Report
Brussels USEU [BE2]
[E3]

In April 2001, the United States, together with Ecuador, reached an agreement with the EU to resolve a long-standing dispute over EU rules for banana imports. The agreement provided for a transition to a tariff-only import system by January 1, 2006.

On November 29, 2005, the EU adopted [Council Regulation 1964/2005](#) setting the import tariff for bananas from MFN countries at 176 EUR per MT. The new import regime, which includes a duty-free annual import quota of 775,000 MT for ACP bananas, is effective as of January 1, 2006.

Two earlier proposals from the Commission were rejected after a WTO arbitrator found that the proposed tariffs (230 EUR/MT and 187 EUR/MT respectively) did not offer fair market access to Latin American banana producers. Latin American suppliers were pushing for a tariff of 75 EUR/MT, which was the in-quota tariff before coming into force the current regime, and to end the zero-duty quota for ACP countries. The new tariff of 176 EUR/MT is not significantly lower than the earlier proposals.

On November 30, 2005, Honduras, Nicaragua and Panama requested consultations with the European Communities under Article 21.5 of the [Dispute Settlement Understanding](#) (DSU). These petitioners argue that the new EC bananas import regime is inconsistent with the recommendations and rulings of the DSB in the EC-Bananas III case ([DS27](#)- Panel and AB reports adopted in 1997), the [Doha Waiver](#) on the Cotonou Agreement adopted in 2001, the two arbitration awards issued in 2005 pursuant to that waiver, and [Article XXVIII](#) of the GATT.

WTO legal experts have pointed out that Article 21.5 is intended to ensure that countries comply with the rulings of the DSB, which is not the case with the waiver agreement. The agreement, which was approved by WTO members, is a sui generis arrangement. Substantively, the waiver agreement establishes a consequence in the event that the EU fails to bind a tariff, preserving market access for Latin American suppliers. In that case, the Article 1 waiver would lapse. On the other hand, the EU could argue that its obligation is to establish a tariff-only regime, and the ACP quota is a way to limit the preference of these countries.

Again, according to legal experts, it would become easier to challenge the EU system, by arguing that it is in violation of GATT Article 1 given that the EU does not have a waiver. A second element would be to challenge the EU for not having lived up to the conditions of the waiver agreement. This would be a novel approach to the WTO case since there have been no prior cases in enforcing conditions of waivers.

Conversely, Colombia, Costa Rica, Guatemala and Ecuador have resumed efforts to work out a framework for monitoring the impact of the banana tariff with the WTO commission in the hope that this could lead to an ultimate lowering of the current tariff. The current discussions are now focused on the monitoring framework (i.e. on what data should be used and how long the monitoring period should be).

There are low expectations for a significant reduction in the tariff since the European Commission may have a commitment with France and Spain to keep the banana tariff in the 150 to 160 euros per ton range. On the other hand, the EU plans to shift the current system of offering ACP preferences to more free-trade arrangements with the ACP countries. Under the so-called Economic Partnership Agreements, this would be put in place by Jan. 1, 2008.

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